

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JUL 23 AM 8:30

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
)	
Plaintiff,	)	Div. 6
)	
vs.	)	RESPONSE TO STATE'S LATE
	)	DISCLOSURE IN VIOLATION
STEVEN CARROLL DEMOCKER,	)	OF ARIZONA RULE OF
	)	CRIMINAL PROCEDURE 15.6
Defendant.	)	(72nd SUPPLEMENTAL
	)	DISCLOSURE DATED JULY 20,
	)	2010)
	)	UNDER SEAL

Steven DeMocker, by and through counsel, hereby respectfully requests that the Court deny the State's Motion to Extend Time for Additional Disclosure pursuant to Rule 15.6(d) filed on July 20, 2010, and preclude the State from offering late disclosed evidence at trial because of the State's failure to comply with Arizona Rule of Criminal Procedure 15.6 and based on this Court's prior orders. This request is based on the due

1 process clause, the Eighth Amendment and Arizona counterparts, Arizona Rules of
2 Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of
3 Points and Authorities.

4
5 **I. History of the State's Failure to Comply with Rule 15 and this Court's
6 Orders Regarding Disclosure.**

7 The defense has repeatedly detailed the State's failures to comply with Rule 15
8 and the Court's orders regarding disclosure. After repeated orders precluding evidence
9 under Rule 15 and dismissing death penalty aggravators based on disclosure violations,
10 on April 28, the Court reminded the State that if it did not comply with Rule 15.6, it
11 would not be permitted to use late disclosed evidence at trial. See April 8, 2010 Order,
12 April 28, 2010 Minute Entry, May 11, 2010 Minute Entry.

13 Trial started on May 4, 2010 with jury selection, and opening statements took
14 place on June 3. On June 17, Judge Lindberg became ill and was unable to continue
15 with trial. Judge Darrow was assigned to the case on July 2.

16 On July 7-8, the State late disclosed over 1100 pages, six CDs, and over 11
17 witnesses. The Court heard argument on the Motions relating to late disclosure on July
18 16, 2010 and took the matters under advisement.

19 **II. The State's Most Recent Disclosure Violations.**

20 The State provided a Notice of additional disclosure on July 15, 2010, relating to
21 some of the items included in the 72nd Supplemental disclosure. On July 20, the State
22 filed a Motion requesting the Court to extend the time to provide disclosure from the
23 72nd Supplemental disclosure under Rule 15.6(d). The State disclosed four CDs of jail
24 calls and 52 pages of documents as part of a 72nd Supplemental disclosure provided to
25 the defense on July 21. Also on July 21, the State disclosed another CD of jail calls and
26 identified it as being part of a 73rd Supplemental disclosure. No Motion has been filed
27 for permission to use the CD from the 73rd Supplemental disclosure.

1 The 72nd Supplemental disclosure includes Sorenson Nonconformance and
2 Corrective Action forms. The defense has no objection to this Sorenson disclosure.

3
4 **III. The Court's Prior Orders Preclude the Late Disclosed Bank of
5 America Trust Records and Jail Calls.**

6 The 72nd Supplemental late disclosure includes Bank of America documents
7 related to the Testamentary Trust for Virginia Carol Kennedy from April 23, 2009
8 through May 31, 2010. (Bates 26861-16911). The disclosure also includes CD's of jail
9 calls from June and through July 15. This evidence is already precluded by prior orders
10 of the Court and is late disclosed. The Court should therefore deny the State's Motion.

11 The late disclosed Bank of America records relate to the payment of Mr.
12 DeMocker's attorney's fees. This Court has already ruled that records relating to this
13 issue from the Testamentary Trust are precluded based on Rules 403 and 404(b). See
14 Transcript of July 16, 2010.

15 The jail phone calls from June and through July 15 are also precluded by prior
16 order of the Court which requires disclosure of jail calls within three days. This
17 evidence is therefore already precluded by prior order of the Court. See April 13, 2010
18 Minute Entry.

19 **IV. The State's Most Recent Disclosure Should Also Be Precluded Based
20 On Arizona Rule of Criminal Procedure 15.6.**

21 Pursuant to Arizona Rule of Criminal Procedure 15.6(b), if a party determines
22 that additional disclosure may be forthcoming within thirty (30) days of trial, it is to
23 notify the court and other parties "immediately" of the circumstances and when the
24 disclosure will be available. Section (d) of the same rule provides that if a party seeks
25 to use material that was not disclosed seven (7) days prior to trial, the party must file a
26 motion and affidavit seeking leave of court to use the material or information. The
27 Court may either grant or deny the motion. If the Court grants the motion, the Court
28 may also issue sanctions. In considering whether to grant the motion, the Court is to

1 consider whether "the material or information could not have been discovered or
2 disclosed earlier even with due diligence and the material or information was disclosed
3 immediately upon its discovery."

4 The State has violated subsection (d) of this Rule. The State did file an affidavit
5 but did not attest in the affidavit, because it is not true, that "the material or information
6 could not have been discovered or disclosed earlier even with due diligence and the
7 material or information was disclosed immediately upon its discovery."

8 *1. The State's Lack of Due Diligence on The Testamentary Trust Bank Records.*

9 The State has been aware of the Testamentary Trust of Carol Kennedy since
10 2008. The State has a duty to investigate its case. If the State thought that the bank
11 records related to the Trust were important, it should have requested them sometime in
12 the year and a half before trial. The State had a copy of the Trust documents in
13 November of 2009. (Bates 14081). The State's failure to request these records must
14 lead the Court to conclude that this information could have been discovered and
15 disclosed much earlier with any inquiry from the State. The State's disclosure of this
16 file three months in to trial is only based on the State's own lack of due diligence. This
17 evidence should be precluded on grounds of 15.6, if it is not precluded pursuant to the
18 Court's prior order.

19 *2. Precluded Jail Calls*

20 Furthermore, the Court's order requires calls and visits to be disclosed within
21 three days to be admissible. The State's disclosure of the June and July 1-15 jail calls
22 on July 20, 2010 is in violation of this order and is precluded on this basis. See April
23 13, 2010 Minute Entry.

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CONCLUSION

Defendant Steven DeMocker, by and through counsel, hereby requests that this Court prohibit the State from offering at trial the late disclosed evidence in violation of Rule 15.6 (d) and this Court's prior orders.

DATED this 23rd day of July, 2010.

By: 

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ORIGINAL of the foregoing hand delivered for filing this 23 day of July, 2010, with:

Jeanne Hicks
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COPIES of the foregoing hand delivered this 23 day of July, 2010, to:

The Hon. Warren R. Darrow
Judge Pro Tem B
120 S. Cortez
Prescott, AZ 86303

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Joseph C. Butner, Esq.
Jeffrey Paupore, Esq.

Prescott Courthouse basket

A handwritten signature in black ink, appearing to be 'JP', is written over a horizontal line. The signature is stylized with a large loop and a trailing line.

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